

9
No. 89-1647

Supreme Court, U.S.
FILED
NOV 13 1990
JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

CARNIVAL CRUISE LINES, INC.,
Petitioner,

v.

EULALA SHUTE and RUSSEL SHUTE,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED APRIL 24, 1990
CERTIORARI GRANTED OCTOBER 1, 1990

16-460

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The following materials have been omitted from this joint appendix because they appear on the following pages in the appendix to the petition for writ of certiorari:

<i>Shute v. Carnival Cruise Lines</i> , No. 87-4063 (9th Cir. Feb. 22, 1990)	1a
<i>Shute v. Carnival Lines</i> , No. 87-4063 (9th Cir. Dec. 12, 1988)	25a
<i>Shute v. Carnival Cruise Lines</i> , No. 87-4063 (9th Cir. Apr. 27, 1989) (order withdrawing opinion)	49a
<i>Shute v. Carnival Cruise Lines</i> , No. 56089-7 (Wash. Dec. 7, 1989) (en banc)	50a
<i>Shute v. Carnival Cruise Lines</i> , No. C86-1204D (W.D. Wash. June 25, 1987)	60a
Constitutional Provisions, Statutes, and Rules Involved	66a

DOCKET ENTRIES

(1) Official Docket Entries From U.S. District Court
for the Western District of Washington

DATE	NR.	PROCEEDINGS
1986		
Aug 12	1	COMPLAINT—iss.'d s/c.
Aug 21	2	RET. SVC.—of s/c on Carnival Cruise Lines on 8-18-86.
Sep 5	3	NOTE. APPEAR—of R. Montgomer & J. Rodriguez-Atkatz as cnsl. for deft. Carnival Cruise Lines.
Sep 24	4	ANSWER—of deft. Carnival Cruise Lines.
Sep 25	5	NOTICE—of name change & new address for pltfs. cnsl. G. Wall.
Dec 1	6	STIP. & ORDER—granting deft. leave to file amended answer. C to c.
Dec 10	7	ORDER—Jt. status report due 90 da. C to c.
Dec 9	8	AMENDED ANSWER—of deft. Carnival Cruise Lines, Inc.
Mar 6	9	JOINT STATUS REPORT—discovery to be completed by 9-1-87, ELT: 3 day non-jury trial, 39.1 med. would be effective after 8-1-87.
Mar 11	10	MINUTE ORDER—Trial Settings & Related Dates: Trial Date: 1-11-88 ELT: 2 day non-jury Pretrial Order due: 12-28-87 Disc. completed by: 9-2-87 Dispositive motions filed no later than: 10-8-87 & noted on motion calendar no later than Fri.: 10-30-87 Trial Briefs Due: 1-4-88. Proposed voir dire & jury instructions due.: n/a Court des. case 39.1 med. upon completion of disc. c to

DATE	NR.	PROCEEDINGS
1986		
Apr 23	11	MOTION—defts. for s/j. note 5-15-87
	12	MEMORANDUM—defts. in sup. of.
	13	AFFID.—of J. Stein.
	—	LODGED ORDER
May 11	—	Ent. rec'd letter from defts. cnsl. continuing mot. for s/j to 5-22-87.
May 15		Ent. defts mot. for s.j. sub. w/o arg.
May 18	14	CROSS-MOTION—pltfs for sum. jdmt. noted 6-12-87.
	15	MEMORANDUM—pltfs in sup. of mot. for sum. jdmt. & in response to defts mot. for sum. jdmt.
	16	AFFID.—of Pamela J. Hinrichs in sup. of pltfs. cr. mtn. for sum. jdmt.
	17	AFFID.—of Lynn Webber
	18	DECLARATION—of Eulala Shute.
	19	DECLARATION—of Russel Shute.
		LODGED ORDER.
May 21	20	REPLY MEMORANDUM—defts in sup. of sum. jdmt.
May 22	—	Ent. deft's mot. for s/j sub. w/o arg.
	21	CORRECTION SHEET—deft. Carnival's to reply memo. in sup. of s/j.
May 26	—	Ent. rec'd letter from pltfs. cnsl. striking cross-mot. for s/j & req. cross mot. be treated as pltf's response to deft's mot. for s/j.
Jun 25	22	ORDER—granting defts' mot. for s/j of dismissal. c to c

DATE	NR.	PROCEEDINGS
1986		
	23	JUDGMENT—entered 6-25-87 deft's mot. for s/j dismissal is granted, this action is dismissed. c to c
Jul 24	24	NOTICE OF APPEAL—pltf's from order ent 6/25/87.
Jul 27	—	Mailed appeal packet to CCA. Cert of Record included.

(2) Chronology of Proceedings In Other Courts

Dec. 12, 1988	Opinion issued by U.S. Court of Appeals for the Ninth Circuit
Mar. 28, 1989	Defendant submits petition for rehearing with suggestion for rehearing en banc
Apr. 27, 1989	Order issued by Ninth Circuit withdrawing previous opinion and certifying question to Supreme Court of the State of Washington
Dec. 7, 1989	Opinion issued by Supreme Court of the State of Washington answering certified question
Feb. 22, 1990	Amended opinion issued by Ninth Circuit
Apr. 23, 1990	Motion of defendant-appellee for stay of mandate to permit filing of petition for writ of certiorari granted by Ninth Circuit

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

—
In Admiralty

Case No. —

EULALA SHUTE and RUSSEL SHUTE,
husband and wife,
Plaintiff,

v.

CARNIVAL CRUISE LINES,
a foreign corporation,
Defendant.

COMPLAINT FOR PERSONAL INJURIES

Plaintiffs allege as follows:

I.

JURISDICTION

This is an admiralty and maritime action pursuant to Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is vested in the court pursuant to 28 U.S.C. Section 1333.

II.

Plaintiffs are residents of the County of Snohomish, State of Washington and are husband and wife. Defendant is a foreign corporation whose principal place of business is Miami, Florida. At all times relevant hereto, it was doing business in the Western District of Washington.

III.

Defendant Carnival Cruise Lines is the owner and operator of the vessel M/V TROPICALE. The M/V TROPICALE is a passenger vessel operating out of United States ports. Defendant Carnival Cruise Lines is a common carrier of passengers for hire. On or about March 27, 1986 plaintiffs purchased tickets for travel onboard the M/V TROPICALE at Smokey Point Travel, in Arlington, Washington. Smokey Point Travel is an authorized ticketing agent for defendant Carnival Cruise Lines. All fees owing for passage were paid by plaintiffs.

IV.

On or about April 13, 1986 plaintiffs boarded the M/V TROPICALE at the Port of Los Angeles for a one week cruise. On Thursday, April 15, 1986 plaintiff Eulala Shute elected to participate in a tour of the vessel's galley which had been advertised in the ship's newspaper. Plaintiff was accompanied by several hundred other passengers. The tour was guided and authorized by the vessel's master and crew. During the tour members of the vessel's crew negligently placed water on the vessel's deck in the galley area, directly in the path of egress of the passengers taking the guided tour. Plaintiff Eulala Shute slipped on the wet deck and was severely injured.

V.

Due to the negligence of the vessel and the negligently unsafe condition of the vessel, plaintiff Eulala Shute was injured, and damaged in an amount to be proven at the time of trial.

VI.

The negligence of the crew had caused a loss of consortium to plaintiff Russel Shute in an amount to be proven at the time of trial.

VII.

After her injury, plaintiff Eulala Shute was treated in an outrageous manner by the crew of the vessel and the crew of the vessel negligently failed to provide her with adequate medical care. As a result of this negligent or intentional outrageous behavior, plaintiffs are entitled to punitive damages in an amount to be proven at the time of trial.

WHEREFORE, plaintiffs pray that the court enter judgment as follows:

1. For damages arising out of the personal injuries of plaintiff Eulala Shute in an amount to be proven at the time of trial.
2. For damages to plaintiff Russel Shute for loss of consortium in an amount to be proven at the time of trial.
3. For punitive damages in an amount to be proven at the time of trial.
4. For reasonable attorneys fees and costs of suit.
5. For such other and further relief as the court deems just.

Dated this 11th day of August, 1986.

WALSH, MARGOLIS & BROUSSEAU

/s/ Gregory J. Wall
GREGORY J. WALL
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

In Admiralty
No. C86-1204D

EULALA SHUTE and RUSSEL SHUTE,
husband and wife,
Plaintiffs,

v.

CARNIVAL CRUISE LINES,
a foreign corporation,
Defendant.

AMENDED ANSWER

Carnival Cruise Lines, Inc. (hereinafter referred to as "Carnival"), for its answer to the complaint of plaintiffs herein (the "Complaint") states and alleges as follows:

1. Defendant Carnival admits the allegations contained in paragraph I of the Complaint.
2. Defendant Carnival admits that it is a foreign corporation with its principal place of business in the United States located at Miami, Florida. Defendant Carnival denies that it was doing business in the Western District of Washington. Defendant Carnival denies the remaining allegations contained in paragraph II of the Complaint for lack of knowledge and information sufficient to form a belief thereto.
3. Defendant Carnival admits that it is a common carrier of passengers for hire and that it is the operator of the M/V TROPICALE which operates out of ports in-

cluding but not limited to United States ports. Carnival also admits that plaintiffs have paid all fees owing for passage on the M/V TROPICALE. Except as so admitted, defendant Carnival denies the allegations contained in paragraph III of the Complaint for lack of knowledge and information sufficient to form a belief thereto.

4. Defendant Carnival admits that plaintiffs boarded the M/V TROPICALE at the port of Los Angeles on or about April 13, 1986 for a one week cruise. Defendant Carnival admits that plaintiff Eulala Shute participated in a guided tour of the TROPICALE's galley while accompanied by other passengers. Except as so admitted, defendant Carnival denies the allegations contained in paragraph IV of the Complaint.

5. Defendant Carnival denies the allegations contained in paragraph V of the Complaint.

6. Defendant Carnival denies the allegations contained in paragraph VI of the Complaint.

7. Defendant Carnival denies the allegations contained in paragraph VII of the Complaint.

AFFIRMATIVE DEFENSES

Defendant Carnival alleges the following affirmative defenses to the Complaint:

First Affirmative Defense

8. Plaintiffs fail to state a cause of action against defendant Carnival upon which relief can be granted.

Second Affirmative Defense

9. Carnival is a foreign corporation which is not doing business in the State of Washington and, therefore, this Court lacks jurisdiction over the person of defendant Carnival.

Third Affirmative Defense

10. The Western District of Washington is an inconvenient forum for the maintenance of this lawsuit and it should therefore be dismissed.

Fourth Affirmative Defense

11. Plaintiffs were allowed passage on board the M/V TROPICALE pursuant to a passenger ticket contract with defendant Carnival (the "Passenger Ticket Contract"), which governs the plaintiffs' and defendant's respective rights and liabilities. Defendant Carnival claims the benefit of all defenses, limitations of liability, and clauses contained in the Passenger Ticket Contract.

Fifth Affirmative Defense

12. The Passenger Ticket Contract at paragraph 8 requires that all lawsuits brought against defendant Carnival must be filed with a court located within the State of Florida. Therefore, this court lacks jurisdiction over the person of defendant Carnival.

Sixth Affirmative Defense

13. Defendant Carnival disclaims any and all liability to plaintiffs pursuant to paragraph 4 of the Passenger Ticket Contract.

Seventh Affirmative Defense

14. Plaintiffs' physical condition prior to the events alleged in the Complaint was the sole and proximate cause of plaintiffs' injuries and the damages claimed herein.

Eighth Affirmative Defense

15. Plaintiffs' injuries and plaintiffs' damages, if any, were proximately caused by plaintiffs' comparative or contributory negligence.

Ninth Affirmative Defense

16. Plaintiffs' injuries and damages, if any, are not actionable because plaintiffs voluntarily and knowingly consented to the situation which caused the injuries alleged by plaintiffs, if in fact they occurred.

WHEREFORE, defendant Carnival prays:

1. That the Complaint of plaintiffs be dismissed;
2. That Carnival be awarded its costs and disbursements and attorneys' fees incurred in the defense of this action; and
3. That the Court award Carnival such other and further relief as may be deemed just and proper.

DATED this 9th day of December, 1986.

BOGLE & GATES

/s/ Jonathan Rodriguez-Atkatz
JONATHAN RODRIGUEZ-ATKATZ
Attorneys for Defendant
Carnival Cruise Lines, Inc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. C86-1204

EULALA SHUTE and RUSSEL SHUTE,
husband and wife,
Plaintiffs,

v.

CARNIVAL CRUISE LINES,
a foreign corporation,
Defendants.

DECLARATION OF EULALA SHUTE

I EULALA SHUTE, state as follows:

1. I am one of the plaintiffs in the above captioned action.
2. I make these statements from my own personal knowledge.
3. On or about March 27, 1986 my husband and I purchased tickets for a Carnival Cruise Line cruise on the M/V Tropicale.
4. My husband and I sailed from the port of Los Angeles on the M/V Tropicale on April 13, 1986 for a one week cruise to Puerto Vallarta and back to Los Angeles.
5. I purchased the cruise tickets through Smokey Point Travel in Arlington, Washington. Also, I received literature from Smokey Point Travel about Carnival Cruise Lines.

/s/ Eulala R. Shute
EULALA SHUTE

4. I was informed during that conversation that Carnival Cruise Lines advertises on a regular basis in the

Seattle Times and places advertisements at least in every Sunday edition of the paper.

5. I was further informed that the cost of the advertisements of Carnival Cruise Lines, Inc., is \$134.39 per square inch.

6. Attached hereto as Exhibits A, B and C are copies of advertisements I found in Seattle papers on January 4, 1987, May 10, 1987, and May 12, 1987. Exhibits B and C are almost full page advertisements. Exhibits A and B are from the Sunday Seattle Times/Post Intelligencer and Exhibit C is from the Seattle Times Wednesday edition.

7. Attached hereto as Exhibit D is a copy of the brochure of Carnival Cruise Lines, Inc., that the plaintiffs received.

/s/ Pamela J. Hinrichs
PAMELA J. HINRICHS

SUBSCRIBED AND SWORN to before me this 18th day of May, 1987.

/s/ Darleen N. Pace
Notary Public in and for the
State of Washington,
residing at Bellevue

My commission expires:
5/5/89



P. O. Box 526170, Miami, Florida 33152-6170



SHIP

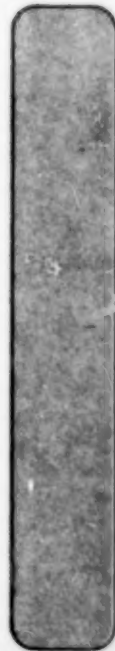
Cabin No.

S P E C I M E N

Passenger Ticket - To Be Presented For Passage



P. O. Box 526170, Miami, Florida 33152-6170



Passenger Booking Number

SHIP

Booking No.

Sailing

Passenger

Adult

Child

Agent

Cabin No.

SUBJECT TO CONDITIONS OF
CONTRACT ON LAST PAGES
← IMPORTANT! PLEASE READ CONTRACT
ON LAST PAGES 1, 2, 3

Passenger's Copy - Not Good For Passage

PASSENGER TICKET

1. (a) Whenever the word "Carrier" is used in this Contract it shall mean and include, jointly and severally, the Vessel, its owners, operators, charterers and tenders. The term "Passenger" shall include, the plural where appropriate, and all persons engaging to and/or traveling under this Contract. The masculine includes the feminine.
- (b) The Master, Officers and Crew of the Vessel shall have the benefit of all of the terms and conditions of this contract.
2. This ticket is valid only for the person or persons named hereon as the passenger or passengers and cannot be transferred without the Carrier's consent written hereon. Passage money shall be deemed to be earned when paid and not refundable.
3. (a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.
- (b) The passenger admits a full understanding of the character of the Vessel and assumes all risk incident to travel and transportation and handling of passengers and cargo. The Vessel may or may not carry a ship's physician at the election of the Carrier. The fare includes full board, ordinary ship's food during the voyage, but no spirits, wine, beer or mineral waters.
4. The Carrier shall not be liable for any loss of life or personal injury or delay whatsoever wheresoever arising and howsoever caused even though the same may have been caused by the negligence or default of the Carrier or its servants or agents. No undertaking or warranty is given or shall be implied respecting the seaworthiness, fitness or condition of the Vessel. This exemption from liability shall extend to the employees, servants and agents of the Carrier and for this purpose this exemption shall be deemed to constitute a Contract entered into between the passenger and the Carrier on behalf of all persons who are or become from time to time its employees, servants or agents and all such persons shall to this extent be deemed to be parties to this Contract.
5. Each fully paid adult passenger will be allowed an unlimited amount of baggage free of charge. Baggage means only trunks, valises, satchels, bags, hangers and bundles with their contents consisting of only such wearing apparel, toilet articles and similar personal effects as are necessary and appropriate for the station in life of the passenger and for the purpose of the journey.
6. No tools of trade, household goods, presents and/or property of others, jewelry, money, documents, valuables of any description including but not limited to such articles as are described in Section 4281 Revised Statute of the U.S.A. (46 USCA § 181) shall be carried except under and subject to the terms of a special written contract or Bill of Lading entered into with the Carrier prior to embarkation upon application of the passenger and the passenger hereby warrants that no such articles are contained in any receptacle or container presented by him as baggage hereunder, and if any such article or articles are shipped and the passenger's baggage in breach of this warranty no liability for negligence, gross or ordinary, shall attach to the Carrier for any loss or damage thereto.
7. It is stipulated and agreed that the aggregate value of each passenger's property under the Adult ticket does not exceed \$100.00 (half ticket: \$50.00) and any liability of the Carrier for any cause whatsoever with respect to said property shall not exceed such sum, unless the passenger shall in writing, delivered to the Carrier prior to embarkation, declare the true value thereof and pay to the Carrier prior to embarkation a sum (in U.S. Dollars) equal to 5% of the excess of such value, in which event the Carrier's liability shall be limited to the actual damages sustained to the property but not in excess of the declared value.
8. The Vessel shall be entitled to leave and enter ports with or without pilots or tugs, to tow and assist other vessels in any circumstances to return to or enter any port at the Master's discretion and for any purpose and to deviate in any direction or for any purpose from the direct or usual course, all such deviations being considered as forming part of and included in the proposed voyage.
9. If the performance of the proposed voyage is hindered or prevented) or in the opinion of the Carrier or the Master is likely to be hindered or prevented) by war, hostilities, blockade, ice, labor conditions of the proposed voyage.
10. The Carrier and the Vessel shall have a lien upon all baggage, money, motor cars and other property whatsoever accompanying the passenger and the right to sell the same by public auction or otherwise for all sums whatsoever due from the passenger under this contract and for the costs and expenses of enforcing such lien and of such sale.
11. The passenger or if a minor his parent or guardian shall be liable to the Carrier and to the Master for any fines or penalties imposed on the Carrier by the authorities for his failure to observe or comply with local requirements in respect of immigration, Customs and Excise or any other Government regulations whatsoever.
12. No passenger shall be allowed to bring on board the Vessel Weapons, Firearms, Ammunition, Explosives or other dangerous goods without written permission from the Carrier.
13. The Carrier shall have liberty without previous notice to cancel at the port of embarkation or at any port of this Contract and shall thereupon return to the passenger, if the Contract is cancelled at the port of embarkation, his passage money, or, if the Contract is cancelled later, a proportionate part thereof.
14. The passenger warrants that he and those traveling with him are physically fit at the time of embarkation. The Carrier and Master each reserves the right to refuse passage to anyone whose health or welfare would be considered a risk to his own well-being or that of any other passenger.

CONTRACT PAGE 1

5. The Carrier shall not be liable for losses of valuables unless stored in the Vessel's safety depository and then not exceeding \$500 in any event.
6. If the Vessel carries a surgeon, physician, masseuse, barber, hair dresser or manicurist, it is done solely for the convenience of the passenger and any such person in dealing with the passenger is not and shall not be considered in any respect whatsoever, as the employee, servant or agent of the Carrier and the Carrier shall not be liable for any act or omission of such person or those under his orders or assisting him with respect to treatment, advice or care of any kind given to any passenger.
7. The surgeon, physician, masseuse, barber, hair dresser or manicurist shall be entitled to make a proper charge for any service performed with respect to a passenger and the Carrier shall not be concerned in any way whatsoever in any such arrangement.
8. The Carrier shall not be liable for any claims whatsoever of the passenger unless full particulars thereof in writing be given to the Carrier or their agents within 185 days after the passenger shall be landed from the Vessel or in the case the voyage is abandoned within 185 days thereafter. Suit to recover any claim shall not be maintainable in any event unless commenced within one year after the date of the loss, injury or death.
9. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country.
10. The Carrier, in arranging for the service called for by all shore feature coupons or shore excursion tickets, acts only as agent for the holder thereof and assumes no responsibility and in no event shall be liable for any loss, damage, injury or delay to or of said person and/or baggage, property or effects in connection with said services, nor does Carrier guarantee the performance of any such service.
11. The Carrier and the Master shall have liberty to comply with any orders, recommendations or directions whatsoever given by the Government of any nation or by any Department thereof or by any person acting or purporting to act with the authority of such Government or Department or by any Committee or person having under the terms of the War Risks Insurance on the Vessel the right to give such orders, recommendations or directions, and if by reason of and in compliance with any such orders, recommendations or directions anything is done or is not done the same shall not be deemed a deviation or a breach of this Contract. Disembarkation of any passenger or discharge of his baggage in accordance with such orders, recommendations or directions shall constitute due and proper fulfillment of the obligations of the Carrier under this Contract.
12. (a) The Carrier shall not be liable to make any refund to passengers in respect of lost tickets or in respect of tickets wholly or partly not used by a passenger.
- (b) If for any reason whatsoever the passenger is refused permission to land at the port of disembarkation or such other ports as is provided for in Clauses 14 and 15 hereof, the passenger and his baggage may be landed at any port or place at which the Vessel calls or be carried back to the port of embarkation and shall pay the Carrier full fare according to its tariff in use at such time for such further carriage, which shall be upon the terms herein contained.

CONTRACT PAGE 2

22. Should the Vessel deviate from its course due to passenger's negligence, said passenger or his estate shall be liable for any related costs incurred.
23. The Carrier reserves the right to increase published fares without prior notice. In the event of an increase, the passenger has the option of accepting the increased fare or cancelling reservations without penalty.
24. In addition to all of the restrictions and exemptions from liability provided in this Contract the Carrier shall have the benefit of all Statutes of the United States of America providing for limitation and exoneration from liability and the procedures provided thereby, including but not limited to Sections 4282, 4282A, 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States of America (46 USCA Sections 182, 183, 183b, 184, 185 and 186); nothing in this Contract is intended to nor shall it operate to limit or deprive the Carrier of any such statutory limitation of or exoneration from liability.
25. Should any provision of this Contract be contrary to or invalid by virtue of the law of any jurisdiction or be so held by a Court of competent jurisdiction, such provision shall be deemed to be severed from the Contract and of no effect and all remaining provisions herein shall be in full force and effect and constitute the Contract of Carriage.